

ST 02-0138-GIL 06/25/2002 CONSTRUCTION CONTRACTORS

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL).

June 25, 2002

Dear Xxxxx:

This letter is in response to your letter dated May 23, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

I would like some help determining how to handle the sales tax for a cable installer. I have been informed by the Illinois Department of Revenue that a cable installer, who installs wiring and cable for phone/data communications, should be treated as a construction contractor. As such, they should pay sales tax to their vendors and not collect it from their customers. However, I have a specific question that I would like answered.

My client buys cable and installs it for the purposes of voice/data communications. They specifically itemize most of their bills to show the customer how much they are paying for labor and how much they are paying for materials. The price that they charge for materials is, of course, more than they have paid. Can they purchase cable for one price, install it at higher price, and ignore any sales tax ramifications on the mark-up? This is a question that would be applicable to any contractor that performs work on a time and material basis, but I have had difficulty finding anything in print. The literature that I have read usually assumes that the contractor is doing work on a fixed-price basis but this is not usually the case for my client.

I thank you in advance for your assistance.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

We are unclear what "sales tax ramifications" you refer to in your letter. As stated above, a contractor must pay Use Tax to his supplier based upon the cost price of the item he purchases. Under these circumstances, he does not incur Retailers' Occupation Tax on the transaction, nor is he authorized to collect any "tax" from his client.

Contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. However, please note that Section 1 of the Retailers' Occupation Tax Act states that "[c]onstruction contracts for the improvement of real estate consisting of video, security, and all telecommunication systems do not constitute engaging in a business of selling tangible personal property at retail within the meaning of this Act if they are sold at one specified contract price". Consequently, even if some items used in such contracts are not permanently affixed, the liability incurred by the contractor is a Use Tax liability if the provisions of this section are met.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.